IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 21367 of 2002

Between:

Apsara Theatre, by its Managing Partner,
K.Sarojini Devi, Nuzvid,
Krishna District.

..... PETITIONER

AND

1 Mandal Revenue Officer, Nuzvid Mandal,
Nuzvid, Krishna District.
2 The Joint Collector, Machilipatnam,
Krishna District.
3 Govt. of Andhra Pradesh Rep. by its Principal Secretary,
Home (Genl.A) Department, Secretariat,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction especially one in the nature of writ, of mandamus declaring the action of the 1st and 2nd Respondents in not opening the seal put to the Projector room of the Petitioner theatre in spite of the suspension order passed by the 3rd Respondent and further passing the impugned order R.C.C2.1360/M/2001, Dt. 24-09-2002 imposing fine as illegal, arbitrary, malafide, intentional, contrary kto A. P.C. (R) Act and Rules and consequently set-aside the same as illegal and pass any such other order or orders in the above circumstances of the case in the interest of Justice.

Counsel for the Petitioner : MR.K.V.BHANU PRASAD

Counsel for the Respondents: GP FOR HOME

The Court made the following :

ORDER:

The petitioner-cinema theatre was holding B-Form licence under the A.P.Cinemas (Regulation) Act, 1955 (for short 'the Act'). The same was being renewed. The second respondent by proceedings dated 08.06.2002 revoked the licence on an allegation that contravening the relevant rules and regulations the petitioner reduced the seating capacity. Aggrieved by the same, the petitioner preferred an appeal under Section 10(4) of the Act. Along with the appeal, the petitioner also sought for suspension of the proceedings of the Joint Collector. By an order dated 03.07.2002, the Government of Andhra Pradesh suspended the proceedings of the Joint Collector pending consideration of the appeal. The petitioner allegedly approached the Mandal Revenue Officer for opening the theatre which was sealed, in vain. Therefore, the petitioner appears to have opened the theatre and started screening the films. On a complaint given by the first respondent, the second respondent without even issuing a show cause notice, passed the impugned proceedings dated 24.09.2002 imposing a fine of Rs.2,000/-, assailing which the present writ petition is filed.

Though the writ petition was admitted and the impugned order was suspended by this Court on 28.10.2002, the Government or the respondents have not chosen to file a counter affidavit. Therefore, this Court has to proceed on the facts that are mentioned by the second respondent in the impugned order.

The learned counsel for the petitioner contends that though the licence was revoked by the second respondent on 08.06.2002, the same was valid and therefore, when the proceedings of the second respondent were suspended by the Government, which is the appellate authority, without there being anything else, the licence would become valid. According to the learned counsel, there was no contravention on the part of the petitioner in opening the theatre, as the Mandal Revenue Officer refused to open the theatre. He also submits that the Government of Andhra Pradesh by orders vide G.O.Rt.No.1358, Home (General.A) Department, dated 14.11.2002, allowed the appeal of the petitioner imposing a fine of Rs.10,000/- and a further fine of Rs.100/- for each day during which the violation of rules continued in lieu of revocation of B-Form licence. A copy of the same is placed before this Court and made as part of the record. In that view of the matter, the learned counsel contends that the order of the Joint Collector is unsustainable.

There is no denial that by the date of revocation of B-Form licence the same was valid for some more time. Therefore, when the revocation order was suspended by the Government, it only means that the petitioner is entitled to run the theatre under B-Form licence without any embargo. The second respondent lost sight of this important aspect of the matter and misdirected himself based on the report of the Mandal Revenue Officer. Secondly, before imposing the fine, the second respondent did not even issue notice to the petitioner, which is *ex facie* illegal. Further, the appeal itself is allowed by the Government imposing fine and penalty and this is a strong litigating circumstance in favour of the petitioner.

Accordingly, the impugned proceedings of the Joint Collector imposing a fine of Rs.2,000/- is set aside. The writ petition is accordingly allowed. No costs.

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(V.V.S.RAO, J)

28.06.2005

vs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Tuesday the Twenty Eighth day of June, Two thousand and five.

ASSISTANT REGISTRAR

To

1 Mandal Revenue Officer, Nuzvid Mandal,
Nuzvid, Krishna District.
2 The Joint Collector, Machilipatnam,
Krishna District.
3 The Principal Secretary, Govt. of Andhra Pradesh,
Home (Genl.A) Department, Secretariat,
Hyderabad.

4 Two CCs to the G.P For Home, High court of A.P.,

Hyderabad(O.U.T).

5 2 CD copies